**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 9080 of 1999**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE R.S.GARG**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**G S R T CORPN - Petitioner(s)**
**Versus**
**PM VYAS C/O G S R T CORPN KARMACHARI - Respondent(s)**

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**Appearance :**
MR HS MUNSHAW for Petitioner(s) : 1,
MR KD PANDYA for Respondent(s) : 1,

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**CORAM : HONOURABLE MR.JUSTICE R.S.GARG**

**Date : 02/07/2007**

**ORAL JUDGMENT**

1. Heard Mr.H.S. Munshaw, learned counsel for the petitioner and Mr.K.D. Pandya, learned counsel for the respondent.

2. The petitioner establishment, being aggrieved by the Award dtd.22/12/1998 passed by the Industrial Tribunal, Rajkot in Reference (ITR) No.212 of 1991 directing change of birth of the respondent workman, is before this Court under Article 227 of the Constitution of India with a submission that the tribunal erred in exercising its jurisdiction.

3. Short facts necessary for disposal of the present writ application are that the petitioner who joined the Gujarat State Road Transport Corporation as a workman firstly showed his date of birth as 14/4/1933, but later on, made an application to change the date of birth as 21/9/1933. Further on 14/6/1982, the respondent workman made an application for change of his date of birth on the basis of his father's affidavit sworn on 21/9/1981 stating that his date of birth was 21/9/1935 and not 21/9/1933, the application was rejected by the establishment, therefore, the petitioner submitted a dispute.

4. The tribunal allowed the parties to raise their pleadings and lead evidence, after hearing the parties, the tribunal held that the workman was successful in proving his date

of birth. It, accordingly, ordered in favour of the workman.

5. Mr.Munshaw, learned counsel for the petitioner has raised manifold submissions which I will take one by one.

6. The first submission was that the policy of the petitioner Corporation is that an application for change of date of birth, if is submitted at a belated stage, should not be accepted or allowed, unless it is made within 2-3 years of confirmation of the service. From the records, it would appear and has also not been disputed by Mr.Munshaw that such a pleading was never raised before the learned tribunal nor the alleged policy was filed by the Corporation before the Industrial Tribunal.

7. The law, relating to pleadings and evidence, issues a mandate against the courts that unless a pleading is raised, evidence of any volume would not not be looked into. This Court would not allow the petitioner to raise such a plea at this stage.

8. In the present case, in absence of a pleading that the petitioner has such a policy, the tribunal was not required to looked into anything. Unfortunate for the petitioner is that their legal assistance did not even file copy of said policy before the tribunal. If appropriate steps are not taken by the Corporation or a party, then they cannot be allowed to raise this dispute under Article 227 of the Constitution of India.

9. It was next submitted that in accordance with the judgment of the Supreme Court and this Court, the Tribunal, Civil Court or the High Court should not interfere in the mater of change in the date of birth, specially when there is no cogent and clinching evidence. One judgment annexed with the writ petition is strongly relied upon by the learned counsel for the petitioner to contend that a Court would have no jurisdiction to entertain such an application. In the said matter, the Apex Court did not say that no court shall have jurisdiction to direct change of date of birth. The Apex Court has observed that the modus operandi of an employee / workman should be looked into and the courts should realise that in such cases, if interim orders are passed, those are likely to

affect the future and career of others. The Court also observed that in a case where the dispute is in relation to change in date of birth, if the application made by the workman is granted, he can be compensated in terms of money. The Court also observed that such an application should be filed not on the eve of the retirement, but much before that. In the said matter, the court found that the application for change in the date of birth was filed about a year before the date of superannuation. In the present case, the application has been filed at least ten years before the date of retirement.

10. The respondent did not seek any interim order but he conducted the case before the competent court and obtained orders in his favour. The judgment of the Apex Court does not say that that in no case the court would have jurisdiction to direct change in the date of birth.

11. It was also submitted that the Civil Court would also have no jurisdiction in the matter. Basically, it depends upon that what is the character of the evidence and whether it is reliable or not. A court if finds that the oral testimony of a person is sufficient to controvert the contents of the

documents, then, relying upon the quality of the evidence, a court can pass an order in favour of such a claimant. In any case, an appellate court would have jurisdiction in the hierarchy of the system to set aside a finding and record a finding afresh, because, that would be the jurisdiction of the appellate court. Present petition is under Article 227 of the Constitution of India and unless the petitioner shows to the Court that the findings are perverse or absurd, meaning thereby that the tribunal has read something in the evidence which is not available on the records or has refused to read something which is available on the records. If perversity is not at large, then, Court exercising its power under Article 227 of the Constitution of India would not be entitled to say that the findings are incorrect nor the writ court would be entitled to substitute its own finding. An incorrect finding would not clothe High Court with jurisdiction to set aside the findings of facts; High Court would be entitled to set aside the findings if the findings are held to be perverse.

12. It was then submitted that no other Government document was produced before the learned tribunal, therefore, the oral evidence and the affidavit of the

father, which was filed before the establishment, could not be relied upon.

13. In the opinion of this Court, the affidavit sworn by the father was not produced as a surprise before the tribunal. In fact, it was filed before the establishment and at that time, the establishment did not think necessary to examine the father either to accept the version or to reject the version of the workman, neither any counter affidavit was filed before the establishment, therefore, under the circumstances, if the contents of the affidavits were not controverted at the first available opportunity, then, a plea would not be available to the establishment to say that the affidavit could not be relied upon.

14. I find no reason to interfere. The petition deserves to and is accordingly dismissed with cost which is quantified at Rs.2000=00 to be paid by the petitioner to the respondent workman. Rule is discharged. Interim relief, if any, is vacated.

(R.S. GARG, J.)

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